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## Attorneys for Debtor in Possession

**UNITED STATES BANKRUPTCY COURT**

**CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION**

In Re

**2<sup>ND</sup> CHANCE INVESTMENT GROUP,  
LLC**

## Debtors and Debtors in Possession.

Case No.: 8:22-bk-12142-SC

Chapter 11

**MOTION FOR ORDER CONFIRMING  
DEBTOR'S FIRST AMENDED  
CHAPTER 11 LIQUIDATION PLAN**

## **Plan Confirmation Hearing:**

Date: February 8, 2024

Time: 11:00 am

Place: Courtroom C - Virtual

**411 W. Fourth Street**

**TO THE HONORABLE SCOTT CLARKSON, UNITED STATES BANKRUPTCY JUDGE;  
THE UNITED STATES TRUSTEE; AND ALL OTHER INTERESTED PARTIES:**

2<sup>ND</sup> Chance Investment Group, LLC (the “Debtor” and the “Debtor in Possession”) moves this Court for an order confirming its First Amended Chapter 11 Liquidating Plan filed on October 12, 2023, as ECF No. 268. The Debtor received ballots in favor of confirmation without any rejections, and otherwise meets the elements required under 11 U.S.C. 1129.

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## I. General Overview

1. The instant case was filed in the Central District of California – Santa Ana Division on  
2 December 21, 2022. The Debtor’s First Amended Chapter 11 Liquidation Plan (the “Plan”) (ECF  
3 No. 268) proposes to pay Debtor’s creditors from a liquidating trust to be created on the Effective  
4 Date as set forth in the Plan and as described in the Disclosure Statement Describing First  
5 Amended Chapter 11 Liquidating Plan (the “Disclosure Statement”) (EC No. 296).

6. The Debtor is a limited liability company that began operations in 2016 as a real estate  
7 investment company that bought, fixed, and sold real property. The Debtor’s pre-petition business  
8 model was to focus on buying real property in distress, remodeling them or otherwise putting them  
9 in condition to be sold, and selling the properties. The Debtor used investors to finance the  
10 property acquisitions.

11. 3. The Plan received six ballots in favor of confirmation with no ballots rejecting the Plan.

12. **Chart 1** illustrates voting entitlement for classes indicates the ballot summary of votes for  
13 tabulation purposes.

Class	Accepting		Rejecting	
	Number of Ballots Received	Amount <sup>1</sup>	Number of Ballots Received	Amount
4 American Express	1	\$0227,492.42	0	\$0
National Bank				
4 ASB Ventures, LLC	1	\$201,283.39	0	\$0
4 Felipe Gutierrez, Jr.	1	\$66,125	0	\$0

27.  
28.  
<sup>1</sup> This is the amount listed in the submitted ballot.

1	4	1	\$1,256,031.58	0	\$0
2	Precision Realty Fund, LLC				
3	4	1	\$1,122,000	0	\$0
4	Salvador Jimenez				
5	4	1	\$270,000	0	\$0
6	Zisman Family Trust				
7					
8					
9					

10           **II. Debtor's Plan Should Be Confirmed**

11       4. To confirm the Plan, the Court must find that both the Plan and the Debtor follow each of  
12 the requirements of section 1129(a) of the Bankruptcy Code. See In re Tribune Co., 464 B.R. 126  
13 (Bankr. D. Del. 2011; In re Exide Techs., 303 B.R. 48, 58 (Bankr. D. Del. 2003)).

14       5. The proponent of the plan complies with the applicable provisions of this title. The Debtor  
15 continues to comply with obligations to the United States Trustee including being current with  
16 operating reports, quarterly fees, and providing ongoing and updated insurance policies.  
17

18       6. The plan has been proposed in good faith and not by any means forbidden by law. The  
19 Debtor provided notice to all creditors and an opportunity to participate in the bankruptcy. The  
20 tallied ballots provide the Debtor with one class supporting plan confirmation.  
21

22       7. Any payment made or to be made by the proponent, who is the debtor, or by a person  
23 issuing acquiring property under the plan, for services or for costs and expenses in or in  
24 connection with the case, or in connection with the plan and incident to the case, has been  
25 approved by, or is subject to the approval of, the court as reasonable.  
26

27       8. The Debtor's plan proposes to execute a Liquidating Trust Agreement on the Effective  
28 Date, which shall be for the benefit of all creditors entitled to receive distributions under the Plan

1 from the Liquidating Trust. The Committee will retain its standing post-confirmation to pursue  
2 avoidance actions while secured creditors will be paid from the sale of escrow, and unsecured  
3 creditors will be paid consistent with the terms of Class 4 under the Plan.

4 9. The Plan meets all of the requirements for confirmation set forth in the Bankruptcy Code.  
5 The courts have found that a preponderance of the evidence is the appropriate standard of proof in  
6 the context of plan confirmation. In re Ambanc La Mesa Limited Partnership, 115 F.3d at 650,  
7 653 (citing, In re Arnold and Baker Farms, 177 B.R. 648, 654 (Bankr. 9th Cir. 1994), aff'd on  
8 other grounds, 85 F.3d 1415 (9th Cir. 1996), cert. denied, 136 L. Ed. 2d 607, 117 S. Ct. 681  
9 (1997). Proof by a preponderance of the evidence means that it is sufficient to persuade the finder  
10 of fact that the proposition is more likely true than not. Arnold and Baker Farms, 177 B.R. at 654  
11 (citations omitted).

14 10. The following contains the legal authority and factors necessary to support confirmation of  
15 the Plan. See In re Cardinal Congregate I, 121 B.R. 760, 765 (Bankr. S.D. Ohio 1990) listing  
16 factors that may be required.

17 **A. The Debtor's Plan Complies With 11 U.S.C. Section 1129(a)(1)**

18 11. Section 1129(a)(1) of the Bankruptcy Code provides that a plan of reorganization may be  
19 confirmed only if “[t]he plan complies with the applicable provisions of this title.” 11 U.S.C. §  
20 1129(a)(1). See In re Machine Menachem, Inc., 233 F. App'x. 119, 120 (3d Cir. 2007). The  
21 legislative history of section 1129(a)(1) explains that this provision encompasses the requirements  
22 of section 1122 and 1123 of the Bankruptcy Code, which govern classification of claims and  
23 interests in the contents of the plan, respectively. See S. Rep. No. 95-989, at 126 (1978), as  
24 reprinted in 1978 U.S.C.C.A.N. 5787, 5912; H.R. Rep. No. 95-595, at 412 (1977), as reprinted in  
25 1978 U.S.C.C.A.N. 5963, 6368; see In re Johns-Manville Corp., 68 B.R. 618, 629 (Bankr.  
26  
27

S.D.N.Y. 1986) (noting that confirmation objection under section 1129(a)(1) usually involve  
failure of plan to conform to either section 1122(a) or section 1123 of the Bankruptcy Code), aff'd,  
78 B.R. 407 (S.D.N.Y. 1987), aff'd, 843 F.2d 636 (2d Cir. 1988).

12. Section 1122 governs classification of claims. Section 1123 describes both mandatory and  
elective provisions. Section 1122 contains two rules applicable to the classification of claims and a  
single rule concerning classification of interests.

## B. Classification of Claims and Interests Under 11 U.S.C. § 1122

13. Section 1122 of the Bankruptcy Code provides:

- a. Except as provided in subsection (b) of this section, a plan may place a claim or an interest in a class only if such claim or interest is substantially similar to the other claims or interests in such class.
- b. A plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approve as reasonable and necessary for administrative convenience.

### 11 U.S.C. § 1122

14. The plan proponent has significant flexibility in placing claims and interests into different classes, provided there is a rational legal or factual basis to do so and all claims or interests within a particular class are substantially similar. *See, e.g., John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assocs.*, 987 F.2d 154, 159 (3d Cir. 1993) (noting that a classification scheme is permissible if a legal difference exists between the classes); *In re Kaiser Aluminum Corp.*, No. 02-10429, 2006 WL 616243, at 5 (Bankr. D. Del. Feb 6, 2006) (finding that the classification was proper under section 1122 of the Bankruptcy Code because the classification scheme reflected the “diverse characteristics” of those claims and interests), aff'd, 343 B.R. 88 (D. Del. 2006).

15. The Plan separates claims into classes appropriately under these requirements. The Administrative Claims, which are not required to be classified, are listed as unclassified.

16. The Plan provides for the Liquidating Trust as the disbursing agent.

17. The Debtors' classification analysis of why claims are classified as they are provided in more detail illustrated below, labeled Chart 2.

## Chart 2

Class	Claim Analysis
Unclassified Claims	Certain types of claims are not placed into voting classes; instead, they are unclassified. They are not considered impaired, and they do not vote on the Plan because they are automatically entitled to specific treatment provided for them in the Bankruptcy Code. Unclassified Claims are: Administrative Expenses, Professional Fee claims, and Priority Tax Claims
Class 2-5 U.S. Small Business Administration	U.S. Small Business Administration is the sole creditor in Class 2-5. This claim is separately classified based on the UCC filing statement for personal property it relates to and its statutory remedy for any delinquency or default.
Class 2-7 Fay Servicing	Fay Servicing is the sole creditor in Class 2-7 as the first priority mortgage claim against the real property commonly known as 3025 Glenview Ave, San Bernardino, CA 92407. The claimant shall be paid pursuant to the liquidating trust.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>Class 2-10 Del Toro Servicing, Inc.</p> <p>Del Toro Servicing, Inc. is the sole creditor in Class 2-10 as the first priority mortgage claim against the real property commonly known as 1611 1551<sup>st</sup> St., San Leandro, CA 94578. This claimant shall be paid pursuant to the liquidating trust.</p>
	<p>Class 2-12 FCI</p> <p>FCI is the sole creditor in Class 2-12 as the first priority mortgage claim against the real property commonly known as 1004 Peachwood CRT, Los Banos, CA 93635. This claimant shall be paid pursuant to the liquidating trust.</p>
	<p>Class 2-16 Select Portfolio Servicing</p> <p>Select Portfolio Servicing. is the sole creditor in Class 2-16 as the first priority mortgage claim against the real property commonly known as 1352 Marty Lane, Garden Grove, CA 92843. This claimant shall be paid pursuant to the liquidating trust.</p>
	<p>Class 3 Rejected Leases</p> <p>Class 3 is for any executory contract, unexpired lease claim, or personal guarantee of leases or contracts which will be treated as obligations of the Reorganized Debtor. All leases in this class are rejected on the Effective Date.</p>
	<p>Class 4 General Unsecured Nonpriority Claims</p> <p>All general unsecured claims that are not administrative convenience claims or are otherwise contingent or unliquidated are treated in Class 4.</p>

1		
2	Class 5 Disputed, Contingent, and Unliquidated Claims Subject to Discharge	Class 5 is for unfiled claims now subject to discharge that were originally listed as disputed, contingent, or unliquidated.

6       18. This classification scheme was not designed with an eye toward fashioning a single  
7 impaired accepting class. Rather, it is the variance the claims that requires separate classification.  
8

9       19. The classification scheme set forth in the Plan allows each class of impaired creditors the  
10 opportunity to cast meaningful votes on the Debtor's Plan, satisfying the basic purposes of  
11 classification under section 1122 of the Bankruptcy Code. Thus, the Plan satisfies section 1122 of  
12 the Bankruptcy Code.  
13

#### 14       **C. Mandatory Contents of the Plan**

15       20. Section 1123(a) of the Bankruptcy Code identifies seven requirements for the contents of a  
16 plan of reorganization.  
17

18       21. Section 1123(a)(1) of the Bankruptcy Code requires that a chapter 11 plan designate  
19 classes of claims and interests other than claims of a kind specified in section 507(a)(2) of the  
20 Bankruptcy Code (administrative expense claims), section 507(a)(3) of the Bankruptcy Code  
21 (claims arising during the "gap" period in an involuntary bankruptcy case), and section 507(a)(8)  
22 of the Bankruptcy Code (priority tax claims). 11 U.S.C. § 1123(a)(1). The Plan complies with  
23 this requirement by expressly classifying all claims and equity interests, other than administrative  
24 claims and priority tax claims.  
25

1       22. Section 1123(a)(2) of the Bankruptcy Code requires that a plan “specify any class of  
2 claims or interests that is not impaired under the plan.” 11 U.S.C. §1123(a)(2). The plan includes  
3 language about the impairment of each class in the plan.

4       23. Section 1123(a)(3) of the Bankruptcy Code requires that a plan “specify the treatment of  
5 any class of claims or interests that is impaired under the plan.” 11 U.S.C. § 1123(a)(3). The Plan  
6 describes how each class and specific claim is treated.  
7

8       24. Section 1123(a)(4) of the Bankruptcy Code requires that a plan “provides the same  
9 treatment for each claim or interest of a particular class.” 11 U.S.C. § 1123(a)(4). This is satisfied  
10 by the classification of claims and the analysis in Chart 2 above.  
11

12       25. The Plan provides adequate means for implementation. Section 1123(a)(5) of the  
13 Bankruptcy Code requires that the Plan provides “adequate means” for implementation. 11 U.S.C.  
14 § 1123(a)(5). Adequate means for implementation of a plan may include retention by the debtor  
15 of all or part of its property; the transfer of property of the estate to one or more entities;  
16 cancelation or modification of any indenture; curing or waiving of any default; extension of a  
17 maturity date or change in an interest rate or other term of outstanding securities; amendment of  
18 the Debtors’ charter; or the issuance of securities in exchange for cash, property, or existing  
19 securities, all in exchange for claims or interests or for any other appropriate purpose. *See*  
20 generally In re Spiegel, Inc., No. 03-11540 (BRL), 2005 WL 1278094, at 5 (Bankr. S.D.N.Y. May  
21 25, 2005).

22       26. The plan specifically includes a section titled “Means of Effectuating the Plan” that  
23 addresses 1123(a)(5). This section discusses funding the plan, establishment of the liquidating  
24 trust, transfer of property to the liquidating trust, governance of the liquidating trust, designation  
25 of the liquidating trustee, post-confirmation management, modification of the plan, claim  
26  
27

1 objections and disputed claims, no distribution pending allowance, distributions made under the  
2 plan, and injunctions.

3 27. Section 1123(b)(2) of the Bankruptcy Code provides that a plan may, subject to section  
4 365 of the Bankruptcy Code, provide for the assumption, rejection, or assignment of any  
5 executory contract or unexpired lease of the debtor not previously rejected under such section. 11  
6 U.S.C. § 1123(b)(2). In accordance with section 1123(b)(2) of the Bankruptcy Code, Class 3 of  
7 the Plan addresses executory contracts and unexpired leases.

8 28. The Debtor complied with the applicable provisions of Title 11 § 1129(a)(2). Section  
9 1129(a)(2) of the Bankruptcy Code requires that the plan proponent “compl[y] with the applicable  
10 provisions of [title 11 of the Bankruptcy Code].” 11 U.S.C. § 1129(a)(2). The primary purpose of  
11 section 1129(a)(2) is to ensure that the plan proponents have complied with the requirements of  
12 sections 1125 and 1126 of the Bankruptcy Code. *See, e.g., In re PWS Holding Corp.*, 228 F.3d at  
13 248 n.23 (quoting *In re Trans. World Airlines, Inc.*, 185 B.R. 302, 313 (Bankr. E.D. Mo. 1995) in  
14 noting that: “The principal purpose of section 1129(a)(2) of the Bankruptcy Code is to assure that  
15 the plan proponents have complied with the disclosure requirements of section 1125 of the  
16 Bankruptcy Code in connection with solicitation of acceptances of the plan.”)

17 29. The Debtor complied with all applicable disclosure and solicitation requirements of section  
18 1125 and 1126 of the Bankruptcy Code and did not disseminate copies of the plan or disclosure  
19 statement until the court approved the disclosure statement.

20 30. Section 1129(a)(3) of the Bankruptcy Code requires that a plan of reorganization be  
21 “proposed in good faith and not by any means forbidden by law.” 11 U.S.C. § 1129(a)(3). “[F]or  
22 purposes of determining good faith under section 1129(a)(3)... the most important point of inquiry  
23 is the plan itself and whether such a plan will fairly achieve a result consistent with the objections

and purposes of the Bankruptcy Code. PWS Holdings, 228 F.3d at 242 (alterations in original) (citation omitted); see also In re SGL Carbon Corp., 200 F.3d 154, 165 (3d Cir. 1999) (holding the good faith standard in section 1129(a)(3) requires that there must be “some relation” between the chapter 11 plan and the “reorganizing-related purposes that [Chapter 11] was designed to serve” and that “The good faith standard requires that the plan be proposed with honesty, good intentions and a basis for expecting that a reorganization can be effected with results consistent with the objectives and purposes of the Bankruptcy Code” (alteration in original) (citations omitted)).

31. “[I]n the context of a Chapter 11 plan, courts have held [that] a plan is to be considered in good faith if there is a reasonable likelihood that the plan will achieve a result consistent with the standards prescribed under the [Bankruptcy] Code.” In re PPI Enters. (U.S.), Inc., 228 B.R. 339, 347 (Bankr. D. Del. 1998) (quoting In re Toy & Sports Warehouse, Inc., 37 B.R. 141, 149 (Bankr. S.D.N.Y. 1984)), aff’d 324 F.3d 197 (3d Cir. 2003). The good faith requirement is satisfied if the plan has been proposed “for the purpose of reorganizing the debtor, preserving the value of the bankruptcy estate and distributing that value to creditors.” In re Gilbertson Rests, LLC, No. 04-00385, 2005 WL 783063, at \*4 (Bankr. N.D. Iowa Apr. 4, 2005); See also In re Source Enters., Inc., No 06-11707-2007 WL 2903954, at \*6 (Bankr. S.D.N.Y. Oct. 1, 2007) (finding good faith requirement satisfied in plan filed with legitimate and honest purposes of maximizing value of estate and effectuating equitable distribution), aff’d 392 B.R. 541 (S.D.N.Y. 2008).

32. The Debtor submits that its plan is proposed in good faith. The Debtor preserves the value of the bankruptcy estate and distributes value to creditors, with a plan that pays allowed claims at least as much under the Plan as they would receive in a chapter 7 liquidation.

33. The Plan’s classification and general provisions are consistent with sections 105, 1122, 1123(b)(6), 1123(b)(3)(A), 1129, and 1142 of the Bankruptcy Code, are fair and reasonable and

1 are part of the Plan and are each necessary for the Debtor's successful reorganization.

2 Considering the foregoing, the Plan complies with section 1129(a)(3) of the Bankruptcy Code.

3

4 **D. All Payments to be Made by the Debtor in Connection with this Case has**  
**been Approved or Is Subject to the Approval of the Court (Section**  
**1129(a)(4)).**

5 34. Section 1129(a)(4) of the Bankruptcy Code requires that:

6 Any payment made or to be made by the proponent, by the debtor, or by a person issuing  
7 securities or acquiring property under the plan, for services or for costs and expenses in or  
8 in connection with the case, or in connection with the plan and incident to the case, has  
9 been approved by, or is subject to the approval of, the court as reasonable.

10  
11 12 U.S.C. § 1129(a)(4).

13 This subsection requires that any and all fees promised or received from the estate in  
14 connection with or in contemplation of a chapter 11 case must be disclosed and subject to the  
15 court's review. *See Johns-Manville*, 68 B.R. at 632 (implying that courts must be permitted to  
16 review and approve reasonableness of professional fees made from estate assets).

17 35. Pursuant to page 9 of the Plan addressing administrative expenses, professionals fee claims  
18 are required to file their fee applications with the Court. These applications remain subject to  
19 Court approval under the standards established by the Bankruptcy Code, including the  
20 requirements of sections 327, 328, 330, 331, 503(b) and 1103 of the Bankruptcy Code, as  
21 applicable. Debtor's counsel filed an initial fee application that was approved by the Court and  
22 intends to file a final fee application after plan confirmation.

1           **E. The Plan Discloses All Required Information Regarding Post-  
2 confirmation Directors, Management**

3       36. Section 1129(a)(5) of the Bankruptcy Code provides that a plan of reorganization may be  
4 confirmed if the proponent discloses the identify of those individuals who will serve as  
5 management of the reorganized debtor, the identify of any insider to be employed or retained by  
6 the reorganized debtor and the compensation proposed to be paid to such insider. *See* 11 U.S.C.  
7 §1129(a)(5). In addition, under section 1129(a)(5)(A)(ii), the appointment of, or continuation in  
8 office of, existing management must be consistent with the interests of creditors, equity security  
9 holders, and public policy. 11 U.S.C. § 1129(a)(5)(a)(ii).

10      37. In determining whether the post-confirmation management of a debtor is consistent with  
11 the interests of creditors, equity security holders, and public policy, a court must consider  
12 proposed management's competence, discretion, experience, and affiliation with entities having  
13 interests adverse to the debtor. *See In re Sherwood Square Assocs.*, 107 B.R. 872, 878 (Bankr. D.  
14 Md. 1989); *See also In re W.E. Parks Lumber Co.*, 19 B.R. 285, 292 (Bankr. W.D. La. 1982) (a  
15 court should consider whether “the initial management and board of directors of the reorganized  
16 corporation will be sufficient independent and free from conflicts and the potential of post-  
17 reorganization litigation so as to serve all creditors and interests parties on an even and loyal  
18 basis”). In general, however, “[t]he [d]ebtor should have first choice of its management, unless  
19 compelling cause to the contrary exists.” *Sherwood Square Assocs.*, 107 B.R. 878. The case law  
20 is also clear that a plan may contemplate the retention of the Debtors’ existing directors and  
21 officers. *See, e.g., In re Texaco Inc.*, 84 B.R. 893, 908 (Bankr. S.D.N.Y. 1988) (determining that  
22 section 1129(a)(5) was satisfied where the plan disclosed Debtors’ existing directors and officer  
23 would continue to serve in office after plan confirmation); *see also In re Trans World Airlines,*  
24 *Inc.*, 185 B.R. 302, 314 (Bankr. E.D. Mo. 1995).

1           38. Post-confirmation management through the Liquidating Trust is discussed starting on page  
2           26 of the Plan. The Disclosure Statement addresses this starting on page 33 of the Disclosure  
3           Statement. The Debtor here is an LLC that will operate as the Debtor in Possession until plan  
4           confirmation; after plan confirmation the Debtor that will dissolve on the Effective Date and after  
5           the transfer of the Trust Property to the Liquidating Trust.  
6

7           39. The Debtor fully satisfied the requirements of section 1129(a)(5) of the Bankruptcy Code.

8           **F. The Plan Does Not Provide For Any Rate Change Subject to Regulatory  
9           Approval (Section 1129(a)(6)).**

10          40. Section 1129(a)(6) of the Bankruptcy Code requires, with respect to a debtor whose rates  
11         are subject to a governmental regulation following confirmation, that appropriate governmental  
12         approval has been obtained for any rate change provided for in the plan, or that such rate change  
13         be expressly conditioned on such approval. 11 U.S.C. § 1129(a)(6). Section 1129(a)(6) of the  
14         Bankruptcy Code does not apply here.

15           **G. The Plan Satisfies the Best Interests Test (Section 1129(a)(7))**

16          41. The best interests of creditors test, as set forth in section 1129(a)(7) of the Bankruptcy  
17         Code, requires that, with respect to each impaired class of claims or interests, each holder of a  
18         claim or interest has accepted the plan or will receive property of a value not less than what such  
19         holder would receive if the debtor were liquidated under chapter 7. *See In re Leslie Fay Cos.*, 207  
20         B.R. 764, 787 (Bankr. S.D.N.Y. 1007); *Kane v. Johns-Manville Corp.*, 843 F.2d 636, 649 (2d Cir.  
21         1988). Also, the best interests test focuses on individual dissenting creditors or interest holders  
22         rather than classes of claims or interests. *Leslie Fay*, 207 B.R. at 787; *In re Drexel Burnham*  
23         *Lambert Group, Inc.*, 138 B.R. 723, 761 (Bankr. S.D. N.Y. 1992).

24          42. A court, in considering whether a plan is in the “best interests” of creditors, is not required  
25         to consider any alternative to the plan other than the dividend projected in a liquidation of all the  
26

1 Debtors' assets under chapter 7 of the Bankruptcy Code. See In re Crowthers McCall Pattern, Inc.,  
2 120 B.R. 279, 297-298 (Bankr. S.D.N.Y. 1990); In re Jartran, Inc., 44 B.R. 331, 389-93 (Bankr.  
3 N.D. Ill. 1984) (best interests test satisfied by showing that, upon liquidation, cash received would  
4 be insufficient to pay priority claims and secured creditors so that unsecured creditors and  
5 stockholders would receive no recovery); In re Victory Constr. Co., 42 B.R. 145, 151 (Bankr. C.D.  
6 Cal. 1984) (same).  
7

8 43. The Debtor performed a liquidation analysis within the Disclosure Statement to determine  
9 whether the Plan satisfies the best interests test and to assist creditors in determining whether to  
10 accept the Plan. As set forth in the Disclosure Statement, the amount paid to the general  
11 unsecured class is not less than the general unsecured class would receive in a Chapter 7. The  
12 liquidation analysis, which exists in Exhibit 2 of the Disclosure Statement, concludes that a  
13 Chapter 7 would result in no less of a payout than the Plan with allowed unsecured claims being  
14 paid in full. As a result, the Plan satisfies the requirements of section 1129(a)(7) of the Bankruptcy  
15 Code.  
16

17 **H. The Plan has been Accepted by the Requisite Classes of Creditors and  
Interest Holders (Section 1129(a)(8))**

18 44. Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests  
19 under a plan has either accepted the plan or is not impaired under the plan. With respect to an  
20 unimpaired class of claims, under section 1126 of the Bankruptcy Code, such unimpaired class of  
21 claims is "conclusively presumed to have accepted the plan" and need not be further examined  
22 under section 1129(a)(8). 11 U.S.C. § 1126(f); see Toy & Sports Warehouse, 37 B.R. at 150  
23 (unimpaired classes of claims deemed to have accepted the plan pursuant to section 1126(f) of the  
24 Bankruptcy Code).  
25  
26

1       45. Section 1126 of the Bankruptcy Code provides that a plan is accepted by an impaired class  
2 of claims if the class members accepting hold at least two-thirds in amount and more than one-half  
3 in number of the claims held by the class members who have cast votes on the plan. 11 U.S.C. §  
4 1126(c).

5       46. A creditor that is listed as disputed, contingent, or unliquidated who fails to file a proof of  
6 claim is not entitled to vote or participate in Debtors' reorganization. In re Johnston, 140 B.R.  
7 526, 529 (9<sup>th</sup> Cir. 1994).

8       47. Under section 1126(g) of the Bankruptcy Code, impaired classes that neither receive nor  
9 retain property under the plan are deemed to have rejected the plan. See 11 U.S.C. § 1126(g).

10      48. There is at least one impaired class of creditors that is entitled to vote and who have voted  
11 in favor of plan confirmation. There are no rejecting ballots.

12      49. The Debtors carry at least one-half in number and two-thirds in amount of actual votes cast  
13 in Class 4.

14

15      **I. The Plan Provides for the Payment of Priority Claims (Section  
16           1129(a)(9))**

17      50. Section 1129(a)(9)(B) of the Bankruptcy Code requires that each holder of a claim of a  
18 kind specified in sections 507(a)(1) and 507(a)(4) through (7) of the Bankruptcy Code – generally,  
19 wage, employee benefit and deposit claims entitled to priority – must receive deferred cash  
20 payments of a value equal to the allowed amount of such claim or cash equal to the allowed  
21 amount of such claim on the effective date of the plan, depending upon whether the class has  
22 accepted the plan. See 11 U.S.C. §1129(a)(9)(B). There are no claims of this type in this case.

23

24      51. Section 1129(a)(9)(C) provides that the holder of a claim of a kind specified in section  
25 507(a)(8) of the Bankruptcy Code –i.e. priority tax claims – must receive deferred cash payments

over a period not to exceed five years after the petition date, the present value of which equals the allowed amount of the claim. *See* 11 U.S.C. § 1129(a)(9)(C).

52. The Franchise Tax board claim (Claim 4) is the sole priority tax claim. This tax claim will be paid in full. Other tax claims based on the sale of property of the estate will be paid as an administrative tax claim.

**J. The Plan has been Accepted by At Least One Impaired, Non-Insider Class (Section 1129(a)(10))**

53. Section 1129(a)(10) of the Bankruptcy Code provides that:

If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

11 U.S.C. § 1129(a)(10); See Drexel Burnham, 138 B.R. at 771.

11. The Plan is accepted by Class 4 under 11 U.S.C. § 1126(c).

**K. The Plan is Feasible (Section 1129(a)(11))**

12. Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of the plan is not likely to be followed by liquidation or further reorganization. As this plan is proposed as a liquidation plan, there is no further liquidation or reorganization contemplated following confirmation of this plan.

**L. The Plan Provides for the Payment of Certain Fees (Section 1129(a)(12))**

13. Section 1129(a)(12) of the Bankruptcy Code requires that certain fees listed in 28 U.S.C. §1930, determined by the court at the hearing on confirmation of the plan, be paid or that provisions be made for their payment. 11 U.S.C. § 1129(a)(12).

1 All fees payable under 28 U.S.C. §1930 are treated as Administrative Claims under the  
2 Plan and have been paid to date and will be paid in full for any subsequent administrative claims,  
3 thereby satisfying section 1129(a)(12) of the Bankruptcy Code.

4 **M. Continuation of Retiree Benefits (Section 1129(a)(13))**

5 14. Section 1129(a)(13) of the Bankruptcy Code requires that a plan of reorganization provide  
6 for the continuation, after the plan's Effective Date, of all retiree benefits at the level  
7 established by agreement or by court order pursuant to section 1114 of the Bankruptcy  
8 Code at any time prior to confirmation of the plan, for the duration of the period that the  
9 debtor has obligated itself to provide such benefits.

10 The Debtor does not provide any "retiree benefits" (as defined in section 1114(a) of the  
11 bankruptcy Code). Thus, the Plan satisfies section 1129(a)(13) of the Bankruptcy Code.

12 **N. Domestic Support**

13 15. Section 1129(a)(14) of the Bankruptcy Code provides that:

14 If the debtor is required by a judicial or administrative order or by statute, to pay a  
15 domestic support obligation, the debtor has paid all amounts payable under such order or such  
16 statute for such obligation that first become payable after the date of the filing of the petition.

17 19 U.S.C. §1129(a)(14).

20 21 16. The Debtor does not have any such order and this requirement is met.

22 **O. No Allowed Unsecured Claim Objected (Sections 1129(a)(15))**

23 17. Section 1129(a)(15) of the Bankruptcy Code provides that:

24 a) The value, as of the effective date of the plan, of the property to be distributed under  
25 the plan on account of such claim is not less than the amount of such claim; or  
26 b) The value of the property to be distributed under the plan is not less than the projected  
27 disposable income of the debtor (as defined in section 1325(b)(2) to be received during

the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

11 U.S.C. § 1129(a)(15)

18. The Disclosure Statement addresses feasibility of the plan beginning on page 61, as to Effective Date feasibility. Exhibit 1 to the Disclosure Statement shows that the Debtor anticipates that upon the Effective Date it will have funds on hand to make the necessary payments under the Plan.

## P. Transfers of Property (Sections 1129(a)(16))

19. 11 U.S.C. § 1129(a)(16) requires that transfers made under the plan be in accordance with  
nonbankruptcy law.

20. The plan contemplates the sale of estate property—the real properties assets listed on

Exhibit 2 of the Disclosure Statement—the proceeds of which will be placed in the Liquidating Trust in order to effectuate the plan. These transfers will be in accordance with nonbankruptcy law.

#### **Q. The Plan Satisfies the “Cramdown” Requirements**

21. Section 1129(b)(1) of the Bankruptcy Code provides that, if certain requirements are met, a plan shall be confirmed notwithstanding that section 1129(a)(8) is not satisfied with respect to one or more classes:

[I]f all of the applicable requirements of... section [1129(a) of the Bankruptcy Code] other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted the plan.

<sup>11</sup> U.S.C. § 1129(b)(1).

1       22. To confirm a plan that has not been accepted by all impaired classes, the plan proponent  
2       must show that the plan “does not discriminate unfairly” and is “fair and equitable” with  
3       respect to the non-accepting impaired classes. John Hancock Mut. Life Ins. Co. 987, F2d  
4       at 157 n.; *See also In re Zenith Elects. Corp.*, 241 B.R. at 105 (explaining that “[w]here a  
5       class of creditors or shareholders has not accepted a plan of reorganization, the court shall  
6       nonetheless confirm the plan if it ‘does not discriminate unfairly and is fair and  
7       equitable’”) (citation omitted).

9       c. The Plan Does Not Discriminate Unfairly with Respect to the Deemed Rejecting  
10      Classes

11      The Plan Bankruptcy Code does not provide a standard for determining when “unfair  
12      discrimination” exists. *See In re 203 N. LaSalle St. Ltd. P’ship*, 190 B.R. 567, 585 (Bankr.  
13      N.D. Ill. 1995), aff’d 195 B.R. 692 (N.D. Ill. 1996), aff’d, 126 F.3d 955 (7<sup>th</sup> Cir. 1997),  
14      rev’d on other grounds, 526 U.S. 434 (1999). Rather, courts typically examine the facts  
15      and circumstances of the particular case to determine whether unfair discrimination exists.  
16      See, e.g., In re Freymiller Trucking, Inc., 190 B.R. 913, 916 (Bankr. W.D. Okla. 1996)  
17      (holding that a determination of unfair discrimination requires a court to “consider all  
18      aspects of the case and the totality of all the circumstances”). At a minimum, however, the  
19      unfair discrimination standard prevents creditors and interest holders with similar legal  
20      rights from receiving materially different treatment under a proposed plan without  
21      compelling justifications for doing so. See, e.g., In re Aztec Co., 107 B.R. 585, 588  
22      (Bankr. M.D. Tenn. 1989); In re Ambanc La Mesa Ltd. P’ship, 115 F.3d 650, 656 (9<sup>th</sup> Cir.  
23      1997).

27      Plan treatment classification is discussed already and will not be duplicated here.  
28

1 d. The Plan is “Fair and Equitable” with Respect to the Deemed Rejecting Classes  
2

3 A plan is fair and equitable with respect to a class of general unsecured claims if either  
4  
5 (i) the plan provides that each holder of a claim of such class will receive property of a  
6 value, as of the effective date of the plan, equal to the allowed amount of such claim, or (ii)  
7 the holder of any claim of or interest that is junior to the claims of such classes will not  
8 receive or retain any property under the plan on account of such junior claim or interest.

9 See 11 U.S.C. § 1129(b)(2)(B). A similar concept applies with respect to classes of  
10 interests. See 11 U.S.C. § 1129(b)(2)(C). A corollary to these absolute priority rules is  
11 that no creditor in a more senior class may receive more than what is owed. In re Exide  
12 Techs., 303 B.R. at 61.

13 The Debtor’s plan contains no unfair discrimination. There are multiple classes of claims  
14 that are treated based on the type of claim. Secured claims are treated in their own classes while  
15 priority claims are paid pursuant to the code. Chart 2 summarizes the plan treatment of each of  
16 these classes and why each classification does not unfairly discriminate

17

18 **R. Modifications to the Plan do not Materially Affects Holders of Claims or  
19 Interests and do not Require Further Solicitation of the Plan.**

20 23. Section 1127(a) of the Bankruptcy Code provides the Debtors with the right to modify the  
21 Plan “at any time” before confirmation. Section 1127(d) of the Bankruptcy Code provides  
22 that any holders of claims or interests that previously accepted the plan should also be  
23 deemed to accept the modified plan. Non-material changes to a plan are routinely allowed  
24 without a re-solicitation of votes on the plan. See, e.g., In re New Power Co., 438 F.3d  
25 1113, 1117-18 (11<sup>th</sup> Cir. 2006) (“the bankruptcy court may deem a claim or interest  
26 holder’s vote for or against a plan as a corresponding vote in relation not a modified plan

unless the modification materially and adversely changes the way that claim or interest holder is treated"); In re Calpine, No. 05-60200, 2007 WL 952042, at 27 (Bankr. N.D. Ill. Apr. 11, 2006) (if modification does not adversely change the treatment of claims, then re-solicitation is not required).

24. As this is a liquidation plan, there is no anticipated modification to the plan that would require further solicitation of the plan as of today.

## Conclusion

The Plan satisfies the requirements of sections 1123, 1127, and 1129 of the Bankruptcy Code. Accordingly, the Debtor requests that the Court (i) confirm the Plan, and (ii) grant the Debtor such other and further relief as is just and proper.

Dated: January 11, 2024

Respectfully Submitted,

/s/ Rich Sturdevant

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